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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in South Africa

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the preliminary report on the situation of human rights in South Africa prepared by the Ad Hoc Working Group of Experts on Southern Africa of the Commission on Human Rights in accordance with Commission resolutions 1991/21 of 1 March 1991, and 1992/19 of 28 February 1992, and Economic and Social Council decision 1991/237 of 31 May 1991.

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I. INTRODUCTION

1. The Commission on Human Rights, at its forty-seventh session, adopted resolution 1991/21 of 1 March 1991, by which it decided to renew for a further period of two years the mandate of the Ad Hoc Working Group of Experts on Southern Africa, established under Commission on Human Rights resolution 2 (XXIII) of 6 March 1967 and, at its forty-eighth session, adopted resolution 1992/19 of 28 February 1992, by which it requested the Working Group, inter alia, to continue to examine the situation regarding the violations of human rights in South Africa and to submit an interim and a final report to the Commission at its forty-eighth and forty-ninth sessions respectively.

2. The Working Group is currently composed of the following six members, serving in their personal capacity and appointed by the Commission on Human Rights: Mr. Mikuin Leliel Balanda (Zaire), Chairman/Rapporteur, Mr. Felix Ermacora (Austria), Vice-Chairman, Mr. Armando Entralgo (Cuba), Mr. Elly-Elikunda Mtango (United Republic of Tanzania), Mr. Zoran Pajic (Bosnia-Herzegovina) and Mr. Mulka Govinda Reddy (India).

3. The Commission on Human Rights at its forty-seventh session further requested the Working Group, in fulfilment of its mandate under resolution 1991/21, to visit South Africa to gather information from concerned individuals and organizations in order to ascertain the situation of human rights in South Africa.

4. In pursuance of that request by the Commission on Human Rights, the Vice-Chairman of the Working Group addressed a letter dated 16 December 1991, to the Permanent Representative of the Republic of South Africa to the United Nations Office at Geneva, drawing his attention to Commission on Human Rights resolution 1991/21 and reiterating the Working Group's hope that his Government would authorize it to visit South Africa in 1992. The request to visit South Africa was renewed by the Chairman of the Working Group in a further letter dated 29 May 1992, in addition to informal contacts with the Permanent Representative of South Africa, the last of which took place on 24 June 1992. On that occasion, the Chairman of the Working Group was informed that in view of the very difficult situation prevailing in South Africa there was no hope for a visit to that country in the near future.

5. It may be mentioned here that notwithstanding the prevailing situation in South Africa, fact-finding missions have been undertaken by Amnesty International in December 1991, the International Labour Office, which conducted an inquiry into a complaint by the Congress of South African Trade Unions (COSATU) in February 1992, and by the International Commission of Jurists (ICJ) in March 1992, in cooperation with the Government of that country. In the latter part of July 1992, Mr. Cyrus Vance, the Special Representative appointed by the Secretary-General of the United Nations, also visited South Africa. All the above missions dealt with issues similar to those under the mandate of the Ad Hoc Working Group of Experts on Southern Africa, as established by the United Nations Commission on Human Rights under

various resolutions dating back to 1967. The Working Group regrets the consistent failure of the Government of South Africa to respect the requests of the Commission on Human Rights to facilitate the Working Group's visit to that country in order to evaluate the prevailing situation of human rights. The Working Group once again wishes to urge the Government of South Africa to concede to the resolutions of the Commission on Human Rights and to allow a visit of the Working Group to that country.

6. In the circumstances, the Working Group had no alternative but to follow the past practice and hear testimonies outside South Africa. The Working Group, therefore, conducted hearings at Harare from 20 to 24 July 1992 and at Gaborone from 27 to 30 July 1992 for the purpose of receiving evidence and hearing testimony from individuals and organizations having first-hand experience with the situation in South Africa. The topics on which the Working Group received evidence and heard testimony were the following: the right to life; detention and deaths in police custody; capital punishment and executions; administration of justice; political trials; the situation regarding the escalating violence resulting in deaths; conditions after the repeal of certain apartheid legislation; return of exiles; constitutional negotiations; the right to education; and the situation of children.

7. During the course of meetings held at Harare, testimony was heard from representatives of the African National Congress (ANC), the Independent Board of Inquiry, Lawyers for Human Rights, the National Association of Democratic Lawyers, as well as a professor of the University of Zimbabwe and another witness in their personal capacities.

8. The Working Group further gathered evidence at Gaborone from representatives of ANC, the Centre for Applied Legal Studies, the Human Rights Commission of South Africa, the Institute for Democratic Alternatives in South Africa, the Legal Resources Centre, the National Children's Rights Committee, the National Coordinating Committee for the Repatriation of South African Exiles, the National Education Crisis Committee of the University of Witwatersrand and the Pan Africanist Congress of Azania (PAC) as well as another witness in his personal capacity.

9. The Working Group received testimony, at Geneva from representatives of the International Labour Office (ILO) regarding the recent development with respect to trade union law and the situation of Black workers in South Africa. The special report of ILO Director-General to the seventy-ninth session of the International Labour Conference on the application of the Declaration concerning Action Against Apartheid in South Africa and the First Supplementary Report of ILO Fact-Finding and Conciliation Commission on Freedom of Association concerning the Republic of South Africa and the comments of the Government of South Africa on it submitted by the ILO representatives will be evaluated by the Working Group in its final report to the Commission on Human Rights at its forty-ninth session.

10. The Working Group heard testimonies from a total of 19 witnesses.

11. The present report, which should be read in conjunction with document E/CN.4/1992/8, is a brief evaluation of the principal developments of the human rights situation in South Africa between February and September 1992.

II. RIGHT TO LIFE

A. Escalation of the death toll during the continuing violence

12. The question of the escalating violence in both Natal and Transvaal was a subject to which many witnesses referred repeatedly. The Working Group is most concerned about the large number of people who continue to die, at the average rate of eight a day, as alleged by numerous witnesses who testified before the Working Group.

13. The International Commission of Jurists (ICJ) carried out a fact-finding mission in March 1992 in order to evaluate the situation regarding the breakdown of law and order in Natal and Transvaal resulting in death and injuries in March 1992. Referring to the Trust Feed case in respect of a massacre that took place in 1988, the report states that, according to the Supreme Court judgement of 23 April 1992, the Court found that the attack was the final event in a planned security force operation to disrupt the community, oust an established resident's association and give Inkatha control of the area. Referring to the judgement of Judge Andrew Wilson, the report states that he said that the behaviour of police officers was "totally unacceptable" and that the killing at Trust Feed had been committed "at the request of officers in the South African police". 1/

14. It was reported that Judge Wilson had called for a public inquiry into the circumstances surrounding the case. The judgement confirmed the views expressed to ICJ by lawyers and church leaders in August 1990 and March 1992. The report states that the Trust Feed case is not an isolated one.

15. The same report describes the events of 22 March 1992, when the members of the ICJ team visited Mooi River, a small town 70 kilometres north-west of Pietermaritzburg. The members of the Commission questioned the owner of a beer shop, who stated that only about a week earlier riot police, who were White, had called at his premises, searched them and demanded to see his papers as well as those of his customers. As the police were leaving, according to three eye-witnesses questioned by the team, one of the officers raised his rifle, fired at a customer, who was about six yards away, and killed him.

16. The ICJ mission carried out investigations of an attack that took place on 13 March 1992 at the Uganda Squatter Camp, Umlazi, Durban, which revealed that the raid had been led by a large force of men wearing Kwazulu police uniforms.

17. According to information received, it would appear that key witnesses in trials, especially those relating to township violence, are subjected to harassment. It has been alleged that some of those witnesses were killed either before or soon after their evidence was taken. The Working Group views the situation with great concern and would like to stress the great importance of providing all potential witnesses the necessary protection from any form of victimization.

18. According to the testimony given by a representative of ILO, 75 trade unionists were assassinated in the Johannesburg area alone in the course of 1992.

B. Boipatong massacre

19. Among the numerous incidents of violence reported to the Working Group, the Boipatong massacre was the most serious with regard to the violation of the right to life.

20. It was widely reported that in an attack on the Black township of Boipatong that took place on 17 June 1992 about 40 people lost their lives. Survivors of the massacre alleged that police vehicles were involved in the massacre and that there were links between the South African Defence Force (SADF) and the KwaMandala hostel from where the Boipatong attack was reportedly launched. During the Goldstone Commission inquiry, it has been widely reported that a Black policeman reportedly alleged complicity of the security forces in the Boipatong massacre. According to the recent reports, it has also been alleged that tape recordings (amounting to about 13 hours) reflecting the police activities just before, during and soon after the massacre took place, were erased accidentally. The veracity of the testimony of the witness alleging this has been questioned by those concerned with the massacre. According to various witnesses who testified before the Working Group, members of the Inkatha Freedom Party (IFP) were implicated in the attack carried out at Boipatong.

21. On 2 July 1992, the State President, inter alia, referred to the massacre and stated that the Goldstone Commission had been charged with the responsibility of investigating it. The terms of reference, according to a statement by Justice Goldstone on 6 July 1992, included the ascertainment of the identity of the persons directly responsible, the cause of the massacre, the action taken by members of SADF who were in the vicinity of the KwaMandala hostel after the massacre, whether action could or should have been taken by the South African police to avert the massacre and the efficiency of investigations of the police to prevent the massacre. The Commission has not yet concluded its inquiry.

22. In a statement, the Minister of Law and Order, Mr. Hernus Kriel, stated that the severe criticism of the police handling of the Boipatong massacre as contained in Dr. P. A. J. Waddington's report would be taken very seriously and approached with the necessary gravity by his Government and the police.

ANC stated that the Waddington report on the police investigations and response to the Boipatong massacre was a damning indictment of the standards of policing in South Africa.

C. Death in detention and police custody

23. It was reported in the Weekly Repression Report (for week No. 31) of the Human Rights Commission of South Africa that the police released a statement that 68 people died in police custody during the first six months of 1992. In addition 6 other deaths in custody were recorded, bringing the total number of deaths in police custody until July 1992 to 74.

24. It was alleged by many witnesses and also widely reported in the media and the press that, in a report based on about 200 cases brought to his attention, Dr. Jonathan Gluckmann, a South African pathologist, alleged that 90 per cent of the deaths in detention resulted from police brutalities against the prisoners. Several witnesses reported that Dr. Gluckmann had been faced once again with a case of death in detention when he examined the body of a 19-year-old boy found dead while in police custody. It was further reported that Dr. Gluckmann had submitted his report to the State President several months prior to the death of the youth. It was alleged that it was only after he decided to go to the press that the South African authorities decided to give their attention to the question. The Working Group noted with very great concern the allegation of the continuation of ill-treatment of prisoners resulting in deaths.

D. Capital punishment and executions

25. During his testimony, the representative of Lawyers for Human Rights referred to the amendments to the Criminal Procedures Act in 1990 after an earlier moratorium on executions. Under the amended law, the imposition of the death penalty was no longer mandatory. The newly created Review Panel, consisting of Judges of the Supreme Court and legal academics, was empowered to determine whether the death penalty would have been imposed by a court of law if it had applied the new law to the case of the convicted person. The Review Panel thus takes over the function of the court that has made a finding according to the old law. The witness claimed that the process could succeed only if the Review Panel was presented with all the necessary and relevant facts regarding the litigation, including the psychological assessments, criminological and social reports. Given the total lack of resources available to the prisoners on death row, the evidence presented to the Review Panel is far from sufficient. The witness stated that in those cases where Lawyers for Human Rights intervened, the results were positive, with either a commutation of sentence or a referral back to the Appellate Division, thus resulting in a positive outcome in most cases. Nevertheless, the fate of most prisoners on death row is determined by the resources available to them, a situation far from satisfactory.

26. The same witness claimed that currently there were more than 300 prisoners under sentence of death. In March 1992, it was announced by the Minister of Justice that 17 of them had exhausted all their legal remedies and that the law would take its own course, that is, executions would take place after adequate notice, although no dates were fixed. In response to the pressures that were brought to bear upon the authorities, however, it was announced by the Government that there would be a moratorium on all further executions pending the adoption of a "bill of rights". The witness stated that while it was gratifying that no executions had taken place during the past two and half years, the imposition of death sentences continued.

27. According to the representative of the Human Rights Commission of South Africa, out of the 300 prisoners on death row, 8 were considered to be political prisoners.

E. Administration of justice

28. The witness referred to the inadequacies on the functioning of the court system and administration of justice. In order to create confidence in the system, he said, it was necessary that it be perceived as a fair and just system presided over by impartial judges that would afford protection to the wronged who sought recourse to justice. In that respect, the witness referred to the necessity of appointing judges who would have the necessary sensitivity and awareness of the background of the accused persons in order to make equitable and just decisions. It was important to tackle the sensitive question of judicial education and creating an understanding for the application of standards and imposing value judgements that were relevant to the realities of the times of those who appear in court before them. Furthermore, the whole system of appointment of judges needed to be reorganized in such a way that the judiciary reflected a balance in terms of representation of all segments of life. The judiciary, the witness further stated, had a particularly important role to play during the period of transition in helping to move away from maintaining the status quo towards a more dynamic role in tranforming the legal system. The witness also referred to the lack of adequate legal representation of accused persons and stated that a system of legal aid, available to all those who were in need, would facilitate fair trials.

F. Political trials

29. The representative of the Human Rights Commission of South Africa reported that during the period July 1991 to June 1992 350 political trials involving 3,567 accused were completed. Of those accused, 613 people paid admission of guilt fines and 235 persons were convicted, of whom 31 received prison sentences. It was further reported that of the rest, 214 were acquitted, 88 were granted indemnity during their trial, judgement was reserved in cases of 4 people, one absconded, charges against 36 were struck from the roll and charges against 2,389 were withdrawn before the trials started.

30. It was stated by the same witness that a feature of political trials during the period under review had been the high number of persons per trial. It was further reported that currently a further 115 known political trials were in progress, involving 1,859 accused.

G. Political prisoners

31. The representative of Lawyers for Human Rights stated that although no accurate figures were available, approximately 300 political prisoners were believed still to be incarcerated he and referred to Mr. MacBride, Mr. Mandele and Mr. Rikube, among others. The mechanisms created to deal with political prisoners were far from satisfactory because the Advisory Committees or Indemnity Committees, as they were called, were merely advisory and their deliberations confidential. In addition, the membership of those Committees did not include anyone from interested parties. After referring to cases and instances where, after due process, a political prisoner should have been released but was not, the witness expressed serious reservations on the effective operation of the prescribed process and the commitment of the authorities to effect the release of the remaining political prisoners and said that that also posed a serious threat to the negotiating process.

32. The representative of the Human Rights Commission of South Africa reported to the Working Group that, since the 30 April 1991 deadline for release of all political prisoners, her organization still had a list of 353 political prisoners. Of these 141 were described as "audited" prisoners, that is, prisoners eligible for categorization as political prisoners and, therefore, candidates for release under the Pretoria Minute.

33. The same witness explained that the figure was arrived at after "audit" meetings between the Human Rights Commission of South Africa, Lawyers for Human Rights and the Department of Correctional Services. However, that process of identifying of prisoners who would be eligible was halted by the Department without any explanation to the parties involved in the audit process.

H. Return of political exiles

34. A representative of the National Coordinating Committee for the Repatriation of South African Exiles (NCCR), in his testimony before the Working Group, stated that at the time of his testimony, 12,000 political exiles had returned to South Africa, and referred to the difficulties faced by their return under the terms of agreement between the Government of South Africa and the Office of the United Nations High Commissioner for Refugees (UNHCR). Although return of the exiles in safety and dignity, as set out under the Memorandum of Understanding, was guaranteed, the witness alleged that it was not respected by the Government of South Africa. He stated that in dealing with the issue, a very narrow and restrictive interpretation of political offences had been applied to the political exiles in question. It

was alleged that on arrival the returnees were arrested and charged for political offences committed prior to their departure from South Africa, and that some of them were subjected to execution, torture, arbitrary arrest and detention. The harassment by the South African police and Internal Security Forces also extended to their families, it was reported.

35. The witness further alleged that almost 100 cases of harassment and intimidation of returnees had been reported to NCCR since January 1992. In many cases, members of the South African police and other Internal Security Forces surrounded the houses of returnees under cover of darkness, using tear-gas and forcing entry. This was followed by beatings and interrogations in respect of ANC activities during the time spent abroad. It was alleged that at least three returnees had disappeared without trace. Most of the 72 returnees who were arrested claimed that they had been severely beaten and tortured. Although some of the returnees were later released, many of them still remained in detention.

36. It was also alleged that 10 people were shot by police in Natal, 4 were killed in the Pretoria, Witwaterstrand and Vaal region, and one person in Orange Free State; the victims were either returnees or close relatives.

37. Referring to a specific incident that took place on 8 June 1992, the witness stated that at 11.00 a.m. a joint contingent of 500 heavily armed members of SADF and the South African police forced their entry into Sebokeng Reception Centre, which was provided to NCCR by the Government under the Memorandum of Understanding. They conducted a search without a warrant, harassed and intimidated the inmates and ransacked the room. Contrary to the agreed procedure under the Memorandum of Understanding, neither the UNHCR nor NCCR had been previously informed of the raid.

38. The witness informed the Working Group that, in a letter dated 3 July 1992, the Department of Home Affairs, referring to the above incident, informed NCCR that on the evening of 8 June 1992, a small contingent of South African police had carried out a cursory search in the Reception Centre, in response to allegations that there were illegal firearms on its premises. The police had requested permission to enter the Centre, and the search had been carried out in all legality and in a very cordial and friendly attitude. Allegations of harassment and intimidation were unfounded, and all occupants of the Centre had been treated with respect and dignity according to the police code of conduct.

39. The transfer of inmates who were accused of contributing to the Boipatong massacre - mostly Inkatha members - from the now closed KwaMandala hostel to KwaMaziza, a hostel situated next to Sebokeng Reception Centre, has raised concern about the safety of the returnees who are mainly ANC members. The witness added that such hostels constituted a continuous danger for the returnees. The Working Group was particularly concerned about the conditions in which hostel dwellers lived. It was repeatedly brought to their notice that hostels dwellers were mainly members of IFP, and most hostels were single-sex hostels.

40. A representative of ILO also stressed the importance of addressing the issue of hostel dwellers, who were a source of violent attacks. He stated that the living conditions in the single-sex hostels needed immediate attention. Numerous other witnesses also testified that hostel dwellers posed a permanent threat to the peaceful pursuit of life in the Black townships and the outskirts of Johannesburg.

III. THE SITUATION AFTER THE REPEAL OF APARTHEID LEGISLATION

41. A representative from the Legal Department of ANC referred to the abolition of the so-called "pillars of apartheid" 2/ and said that notwithstanding the removal of some of the apartheid legislation, the deep-rooted structural inequalities engendered by decades of the apartheid system, could not easily be dislodged. He referred to the repeal of the Land Acts of 1913 and the Development Trust Act of 1936.

42. The same witness continued to say that the White Paper on Land Reform, which was tabled in March 1991, referred, inter alia, to the question of private ownership of agricultural land, which the Government viewed as the "basis of an established and successful agricultural industry". In spite of widespread opposition, both from within and outside Parliament, the Abolition of Racially-based Land Measures Act was passed in June 1991, thus providing for a repeal of the Black Land Act and all other provisions regarding the acquisition and exercise of land rights according to race. The witness went on to say that this Act, however, did not in any way affect the legal status in Bantustans. The witness said that the respect that the new legislation accorded to the integrity of title deeds held by White South Africans, who acquired them through unjust ways, made it incapable of addressing the accumulated injustices in the past. The witness referred to the appointment of an Advisory Commission created by the Act in order to make recommendations to the State President regarding the issue of land allocation. He considered the recommendations to be inadequate because the terms of reference were not wide enough to address effectively the injustices of the past and were only confined to land belonging to the State or state institutions that had not yet been developed or allocated for a specific purpose. In addition, the witness pointed out that the Commission was purely advisory and had no powers of expropriating land for compensating those freehold title-holders who had been victims of forced removals and other discriminatory practices. The witness said that the respect that the Government accorded to the integrity of title deeds did not extend to those held by Africans.

43. Twenty communities that were victims of forced removals, together with the National Land Committee, rejected the Advisory Commission because of the composition of its membership, which was not considered to be representative, since out of the five names proposed by them for appointment to the Commission none had been appointed.

44. The abolition of the laws in question had merely thrown the question of land acquisition at the mercy of market forces and opportunities for Blacks still remain limited, owing to a lack of access to capital. The witness also alleged that there was evidence that some of the land held by the State, which was the subject of a dispute between the State and certain communities, was being sold while the communities were in the process of presenting their cases to the government-appointed Advisory Commission on Land Allocations.

45. The same witness then referred to the Population Registration Act Repeal Act, 1991, section 1 (3), which states:

> "The population register as compiled in terms of the Identification Act, 1986 (Act No. 72 of 1986), and as it exists at the commencement of this Act shall remain in force and of effect until the repeal of the Republic of South Africa Constitution Act 1983 (Act No. 110 of 1983)".

46. The witness said that the Act regulated franchise, mobility, residential rights, welfare benefits and services provided by the State on a racial basis. The prevailing tricameral Constitution, he said, was based on the racial classification contained in the Population Registration Act. He said that although the aforementioned Act had been abolished, the Black majority of South Africa still remained disenfranchised. Thus Africans, who constituted 75 per cent of the population, were totally excluded from the decision-making process. Furthermore, the Population Registration Act Repeal Act of 1991 provided that only those born after the date of the promulgation of the Act (i.e. June 1991) would no longer be classified in racial terms. It may be noted that those born before that date still retained their classification in racial terms. The present situation of the vast majority of the Black population had not changed in any way after the repeal of the Population Registration Act.

47. The witness also referred to the Group Areas Act of 1966 and said it had been repealed under chapter II of the Abolition of Racially Based Land Measures Act of 1966. The local Government Affairs Free Settlement Areas Act of 1988 had also been abrogated at the same time. At the time of those repeals the Government had also proposed the Residential Environment Bill, which was intended to introduce regulations governing "urban standards". The witness alleged that the bill sought to allow residents of individual suburbs to write their own by-laws pertaining to "the aesthetic appearance of any premises, hygiene, overcrowding and the removal of nuisance". In spite of fierce opposition from political and community-based organizations, provisions had been made under chapter III of the Abolition of Racially Based Land Measures Act according to which residents of a neighbourhood could set norms and standards to be followed by all who lived in it. The witness alleged that this was meant to protect the interests of the Whites and constituted a hurdle for the Black people to own properties in those areas. Finally, the witness said that the repeal of the Group Areas Act had benefited only a few middle-class members of the Black community and that the situation could only be redressed after the installation of a democratic constitution followed by affirmative action measures.

IV. CONSTITUTIONAL NEGOTIATIONS

48. The Working Group noted that the constitutional negotiations, which currently dominate the situation in South Africa, had been temporarily halted owing to the deadlock reached on issues of a constitutional nature. The Working Group has also taken note of the fact that following the Boipatong massacre ANC, one of the negotiating parties, declined to continue unless certain conditions were met by the Government of South Africa.

49. In his testimony to the Working Group, a representative of the Legal Department of ANC, who participated as an adviser in the negotiating process, provided a brief background to the situation regarding constitutional negotiations as they progressed after the Convention for a Democratic South Africa (CODESA I), leading up to the deadlock at CODESA II in May 1992. After pointing out that the first overture for a principal policy position on the issue of negotiations was proposed by ANC in Zambia in June 1985, supported by a resolution to give maximum cooperation to the Eminent Persons Group, subsequently set up by the Commonwealth Summit in the Bahamas to investigate the feasibility of a negotiated settlement in South Africa, the witness referred to the culmination of those efforts in the adoption in 1989 of the Harare and United Nations General Assembly Declarations. The developments eventually led to the pronouncements of February 1990 and 1991 and the Pretoria and Groote Schuur minutes. The witness said that, since the first CODESA meeting in December 1991, the 19 parties engaged in the negotiations since the beginning of 1992 had achieved substantial agreement on a wide range of issues. It was agreed that apartheid should be abolished in its entirety and replaced with a non-racial, non-sexist and democratic order in a united South Africa. 3/

50. It was agreed that the new order should be based on a new constitution, which would be the basis of the fundamental law of the country, with an entrenched and justiciable bill of rights protected by an independent and representative judiciary. There was an eventual agreement that a new constitution should be drawn up and adopted by an elected body and that such elections would be under the auspices of a multi-party transitional executive council with executive powers. It was also accepted that elections would be based on the principle of one-person-one-vote, and on a common voters' roll, and that the electoral system of proportional representation would be used. With regard to the preparations, it was agreed that the necessary climate for free political activity would be created and, in this regard, it was agreed that the public media, especially public broadcasting and the security forces, would be placed under multi-party control and supervision so that they would not be at the disposal of one party alone. It was further agreed that an independent and non-partisan electoral commission would be established to take overall charge of the preparations for the elections. The laws that hinder free political activity would be repealed or amended, as necessary, the remainder of the political prisoners would be released and exiles would be allowed to return safely and unconditionally. Of particular significance was the agreement reached that the four so-called "homelands", Transkei, Bophuthatswana, Venda and Ciskei, would be re-incorporated, thus ending the

balkanization and denationalization of millions of people created by the apartheid system. In spite of those agreements, the negotiations were deadlocked on the questions of decision-making within the elected constituent assembly, the mechanisms to be set up to deal with a deadlock in the process of constitution-making, the time-frames for the whole process of finalizing the constitution and, lastly, agreement on what could be regarded as basic constitutional principles over the creation of a senate, whose composition was not clearly defined. The senate, which could consist of representatives of a minority, would be vested with a power to veto the elected representatives of the majority in the country. It was considered to be more appropriate for the constituent assembly, and not CODESA, to decide upon the creation, composition and powers of a second house of parliament.

51. The witness said that only those solutions based on internationally recognized democratic principles and practices would be acceptable. Furthermore, power-sharing with a Government that was not installed on the basis of universal suffrage was not acceptable.

V. THE RIGHT TO EDUCATION

52. The representative of the National Education Crisis Committee, in the course of her testimony before the Working Group, stated that in several documents published by the Government of South Africa at the beginning of 1991, in terms of educational renewal strategy and educational realities, it was admitted by the State for the first time that apartheid policies had created serious problems for education, especially regarding the education of the Black people in South Africa. It was stated by the same witness that one of the consequences of the apartheid system was massive illiteracy. Thus, state documents released in 1990 situate the illiteracy rate at more than 50 per cent and the National Literacy Project between 70 and 80 per cent. Yet the high level of illiteracy is not being addressed by the authorities.

53. It was alleged that curricula and references for education in many institutions were based on the philosophy of Christian national education, a philosophy that justified apartheid. Control and administration of education remained under the 15 old departments, which were based on race and ethnicity. Mass democratic movements and community organizations had demanded a single ministry of education and the abolition of the 15 departments. Referring to the fact that there were no professional teachers' organizations in Black schools, only a teachers' union addressing conditions of service for teachers, the witness stated that no practical steps or recommendations had yet been made on how to dissolve the existing structures and power relations.

54. The witness also stressed the need to ensure the recognition of democratic structures in education, for example, the South African Democratic Teachers' Union (SADTU) which had not been recognized as a national non-racial teachers' organization.

55. The witness further referred to the high level of violence at Black schools, a particularly serious problem that has affected the regularity of schooling and continued to keep many Black children out of school for their own safety. That fact added to the very dissatisfactory situation in the schools, preventing generations of Black children from completing their education within the expected time.

VI. SITUATION OF CHILDREN

56. In its reports E/CN.4/1497 of 8 January 1982 and E/CN.4/1983/38 of 20 January 1983, the Working Group has given detailed consideration to the situation of women and children. The Group was, therefore, particularly interested in the testimony of a representative of the National Children's Rights Committee. The witness said that according to statistics collected by the Human Rights Commission, 189 women and 106 children were killed in violence between July 1991 and June 1992 (10 per cent of the total deaths registered during that period), 227 women and 87 children were injured and the number of orphans and disabled children was increasing.

57. It was also reported to the Working Group that according to the Gluckmann report, among those who died in police custody a substantial number were youths aged between 16 and 19 years.

58. Referring to child labour, the same witness stated that laws against child labour existed, but there was a gap between legislation and practice. The witness reported that the Food and Allied Workers' Union claimed widespread exploitation of children in the food industry, for example, in the canning industry and on farms, where the labour tenancy system lent itself to exploitation. This had a direct impact on education: child workers were too exhausted to go to school, especially as schools were situated far from the homes of the children. It was also reported that children were frequently victims of non-remuneration.

59. The witness referred to the exploitation of thousands of refugee children from Mozambique, by both White and wealthy Black farmers in Gazankulu and Bophuthatswana, who were recruited from refugee settlements and reported as illegal aliens for repatriation to Mozambique when they were due to be paid.

60. The same witness further stated that the problem of street children was aggravated by apartheid laws, destruction of family life, single parenthood, lack of proper infrastructure for child care, family violence, homelessness and forced removals. These were some of the issues addressed at the Children's Summit of South Africa held from 27 May to 1 June 1992 at Cape Town. At the end of the discussions, a detailed Children's Charter was formulated and presented. Many children participated actively in the process.

61. It was reported that the number of children in the streets had increased over the last years owing to factors such as economic pressure and migration from rural areas to urban areas. The situation had been further worsened by

the unrelenting drought and violence. All street children in South Africa, she stated, were Black.

62. The same witness alleged that the State did not provide effective legal procedures to deal with the problem and shelters provided by voluntary organizations were not adequate nor were they regarded as meeting the minimum requirements of the State.

63. The same witness claimed that children in the street were subjected to active harassment by drug pushers and prostitutes, which puts them at high risk from drug peddling, ill-treatment and exploitation, and detention for loitering.

64. The witness also referred to an incident in March 1992, when a home housing street children in Pretoria was set on fire and 8 children died, while 12 others were seriously injured.

65. Referring to children in prison, the witness said that, at any given time, there were approximately 1,000 children in prisons in South Africa, who were often incarcerated together with their jailed parents and retained in police cells, which, under the provisions of the Child Care Act of 1983, could be used as a place of safety. The same witness stated that street children were liable to be arrested for loitering, petty crimes and in some cases, the witness claimed, on trumped-up charges.

66. Although there had been changes compared to the situation that prevailed in the 1980s, the witness stated that children continued to be arrested on spurious charges and detained without notification to parents or legal guardians while awaiting trial. The witness further stated that the courts were not obliged to ensure the presence of the accused's parents or guardians at the trial. Contrary to the Prisons Act of 1959, which provides for visits for prisoners awaiting trial, in many cases juveniles were not allowed to contact their families nor asked where their families lived.

VII. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

67. The Ad Hoc Working Group of Experts on Southern Africa comes to the following conclusions:

(a) The Working Group welcomes the readiness of the Government of South Africa to open the dialogue with the United Nations concerning the abolition of the apartheid system; at the same time it regrets that the Government does not cooperate with the Commission on Human Rights and its Working Group by failing to authorize a visit to South Africa.

(b) The Working Group repeats its appreciation that some South African laws, which are considered pillars of apartheid, have been abrogated; these

are positive and indispensable steps in the direction of establishing human rights in the country. Although these pillars of apartheid have been abrogated, apartheid still exists: the racially oriented Constitution of 1983 is unchanged, the negative effects of the abrogated laws have not been eradicated, the police brutality has not come to an end and the educational system still suffers from the consequences of the apartheid policy. On the other hand it is a positive sign that the Government has ordered impartial investigations into events of violence in parts of South Africa, in particular, the appointment of the Goldstone Commission has to be mentioned.

(c) After the abolition of the Land Act and the Development Trust Act, no further steps have been taken in order to pursue a non-racial land reform, in particular the legal status in Bantustans has not been changed for the better. The effects of the abolition of the Group Areas Act have been undermined by the Residential Environment Bill, which was intended to introduce regulations governing "urban standards". In spite of the abolition of the Population Registration Act, the population register compiled in terms of this racial law remains in force and has effect until the South African Constitution of 1983 is repealed, as is stated in the Population Registration Repeal Act, section 1.(3):

> "The population register as compiled in terms of the Identification Act, 1986 (Act No. 72 of 1986), and as it exists at the commencement of this Act shall remain in force and of effect until the repeal of the Republic of South Africa Constitution Act 1983 (Act No. 110 of 1983)".

Therefore, the racial classification of the vast majority of the South African population - all those born up to the date of the abolition of the Act in June 1991 - is still valid.

(d) The escalating violence in South Africa is a matter of general concern. It is to be welcomed that some of the events have undergone an impartial investigation ordered by the Government. It seems that the police, in particular because of its military-type structure and training, is either not capable or is not willing to intervene impartially and effectively to protect the life and property of the Black population. This has also been confirmed by reports of reputed lawyers investigating the causes of violence. The authors of this violence are - according to witnesses - mainly vigilantes, Inkatha freedom fighters, death squads and the 31st and 32nd Batallions and Koevoet units. Further, the dissolution of the notorious Security Units, the 31st and 32nd Batallions and Koevoet and their reabsorption within the South African police and SADF has been noted by the Working Group. However, these measures cannot be regarded as adequate for the elimination of the fear of the Black population in respect of future excesses that may be committed by these mercenaries if they remain in the country. The violence has led to the deterioration of the social and political climate and the delay in the constitutional discussions. It may be noted here that the additional powers given to the police by the Government of South Africa gives the impression that, in fact, a state of emergency is still in force.

(e) The fact that the victims of township violence are essentially women and children should be a matter of great concern to the Government of South Africa and the international community. Similarly, violence targeted at train commuters, trade unionists and members of the mass media is a subject of particular preoccupation for the Working Group.

(f) Reports of death under suspicious circumstances in police custody are continuing. As reported by Dr. Gluckmann, a South African pathologist, 90 per cent of deaths in detention resulted from police brutalities against prisoners.

(g) The educational system still suffers from the consequences of apartheid, particularly because the apartheid policy of "Christian national education" is still applied and the 15 departments based on race and ethnicity are still operating. Fifty per cent of the Black children are illiterate.

(h) The discussions on a new democratic constitution already foreseen, which provide for basic human rights, fundamental freedoms and an independent judiciary, have been interrupted.

(i) Although there has been a reduction in the numbers of children in detention, incarceration of children without access to parents, deaths in police custody and harassment by the police remain problems requiring urgent attention. Furthermore, other problems affecting children, such as exploitation of their labour, homelessness, drugs and prostitution, must be given urgent consideration by the relevant authorities.

(j) The agreement regarding return in safety and dignity of exiles has not been fully respected by the security forces. The Working Group is concerned by reports that some of the returnees are in detention.

(k) Although the deadline for release of political prisoners has expired, it is a matter of concern that many prisoners have not yet been released. The Working Group is concerned by the evidence presented by witnesses that there were over 110 political trials involving over 1,800 persons still in progress in South Africa as at July 1992.

(l) The system of review in respect of accused persons sentenced to death penalties is still inadequate to protect ordinary accused persons not represented by lawyers. The fact that there may be up to 300 prisoners under sentence of death is, under the circumstances, a matter of concern to the Working Group.

B. Recommendations

68. The Working Group welcomes the recommendations contained in the report of the Secretary-General to the Security Council of 7 August 1992, 4/ and believes that immediate effect should be given to the following recommendations in particular:

(a) The reiteration of the recommendations of the Goldstone Commission relating to a ban on the public display of dangerous weapons and the fencing of hostels, which are places inhabited by immigrant workers obliged to stay without their families and which are places where tensions are arising;

(b) That a series of investigations into the functioning and operations of the army, the police, the Umkhonoto We Sizwe (MK), the Azanian People's Liberation Army (APLA), the Kwazulu police and certain private "security firms" should be undertaken by the Goldstone Commission;

(c) That the reports by the Goldstone Commission should be made available to all signatories of the Peace Accord within 24 hours of submission to the State President, in order to enhance the impact and credibility of the reports;

(d) That there is a need for prompt investigations and prosecution by the competent departments, as required pursuant to the reports of the Goldstone Commission, in order to enhance the credibility of the law enforcement machinery of the country;

(e) That the United Nations should provide 30 observers to serve in South Africa;

(f) That United Nations missions should be sent on a quarterly basis or more frequently if the situation so warrants, to provide the Security Council and the Commission on Human Rights with information that is regular and objective.

69. The Working Group strongly recommends the implementation of the above recommendations with immediate effect.

70. In the light of the recommendations that the United Nations should provide 30 observers to serve in South Africa, it is recommended that members of Ad Hoc Working Group of Experts on Southern Africa should be included among the observers. The reports of the Ad Hoc Working Group should be used as a source of information.

71. The educational system in South Africa should be transformed into a non-racial system in which the establishment of schools and the educational infrastructure for the now underpriviledged African youth must become a public target of highest priority within South Africa and the international community.

72. The agreement between the Government of South Africa and UNHCR under the Memorandum of Understanding should be respected and returning exiles should be accorded a general amnesty without fear of prosecution.

73. With regard to the forthcoming World Conference on Human Rights, which will be held in 1993, the General Assembly should ensure that the item "Complete abolition of the apartheid system" is incorporated into the draft agenda of the Conference.

74. In view of the reported harassment and assassination of witnesses, the Working Group stresses the great importance of providing all potential witnesses with the necessary protection from any forms of victimization; and guarantees should be established to secure the safety of such witnesses with the help of United Nations monitoring.

Notes

1/ ICJ report, Agenda for Peace, pp. 4-6.

2/ E/CN.4/1992/8, paras. 144-169.

3/ E/CN.4/1991/10, annexes I and II.

4/ S/24389.